

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 25 2015

OFFICE OF
MANAGING DIRECTOR

Mr. Charles F. Dunham
Managing Member
Kenai Broadcasting, LLC
10914 E. 46th Avenue
Spokane Valley, WA 99206

Licensee/Applicant: **Kenai Broadcasting, LLC**
Waiver and Refund Request: Late Payment Penalty
and Fees
Disposition: **Denied** (47 U.S.C. § 159(c)(1); 47
C.F.R. § 1.1164)
Station: KKNL-FM
Fees: Fiscal Year (FY) 2012 Late Payment Penalty
Date Request Filed: Apr. 9, 2015
Date Regulatory Fees Paid: Mar. 27, 2015
Date Late Regulatory Fees Paid: Mar. 27, 2015
Fee Control No.: RROG-14-00015949

Dear Mr. Dunham:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty for late payment of the Fiscal Year (FY) 2012 regulatory fee. As we discuss below, we deny the *Request* because Licensee failed to establish the existence of bank error or extraordinary circumstances.

Background

In establishing the regulatory fee program mandated by Congress,² the Commission set out the relevant schedules of the annual fees and the established the procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.³

¹ Letter from Charles F. Dunham, Managing Member, Kenai Broadcasting, LLC, 10914 E. 46th Ave., Spokane Valley, WA 99206 to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., SW, Room TW-B204, Washington, DC 20554. (Apr. 9, 2015).

² See 47 C.F.R. § 1.1151.

³ See 47 C.F.R. Part 1, Subpart G.

On August 13, 2012, the Commission announced September 13, 2012, as the deadline for paying the FY 2012 annual regulatory fees.⁴ Under the law, 47 U.S.C. §159(c)(1), if the full amount is not received at the Commission's lockbox bank by the due date, a late payment penalty of 25% of the amount not paid accrues automatically. Specific to payment and penalties, "[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,"⁵ which provides in relevant part, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... not paid in a timely manner,"⁶ "[i]f a regulatory fee is not paid in a timely manner, the regulatee will be ... assess[ed] a 25 percent penalty [and] the delinquent payor's pending applications [will be subject] to dismissal,"⁷ and "[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee."⁸

Under the terms of an Asset Purchase Agreement dated May 14, 2012, Licensee acquired the license, and on May 17, 2012, Licensee filed at the Commission an Application for Consent to Assignment of Broadcast Station Construction Permit or License. On May 29, 2013, the Commission notified Licensee that the relevant FY 2012 regulatory fee and accrued charges were unpaid and delinquent. On March 27, 2015, Licensee paid the FY 2012 regulatory fee and accrued charges, and on April 9, 2015, it submitted its *Request* that we waive and refund the late payment charges on the grounds that Licensee was unable to pay the regulatory fee on time because Licensee "was not aware that [the FY 2012] fees would not be considered 'current year' until September, hence [Licensee] had no idea that there was anything else owing."⁹

Standards

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.

Under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,¹⁰ and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"¹¹ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."¹² Specifically, "[a]ny late payment or insufficient payment of a

⁴ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice, DA 12-1295, 27 FCC Rcd 9210 (2012).

⁵ 47 C.F.R. § 1.1157(c)(1).

⁶ 47 C.F.R. § 1.1164.

⁷ 47 C.F.R. § 1.1164(c).

⁸ 47 C.F.R. § 1.1164(e).

⁹ *Request*.

¹⁰ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹¹ 47 C.F.R. § 1.1164.

¹² 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”¹³

Discussion

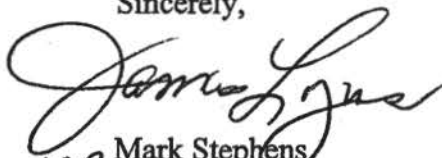
For FY 2012, the deadline for paying regulatory fees was September 13, 2012.¹⁴ Licensee failed to complete payment by that date, thus the unpaid fee became a delinquent debt and, as required by the law, we imposed the charges described above.

Licensee’s assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee’s inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁵ The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is “only in the most extraordinary circumstances,”¹⁶ which Licensee does not establish.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


For Mark Stephens
Chief Financial Officer

¹³ 47 C.F.R. § 1.1164.

¹⁴ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

¹⁵ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁶ *McLeodUSA Telecommunications Services, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).